



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2004

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2004-3191

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "PIA"), chapter 552 of the Government Code. Your request was assigned ID# 199725.

The Texas Department of Public Safety (the "department") received a request for various information relating to a criminal case pending in the 366th Judicial District Court of Collin County, Texas. You first state that the department believes that the request is not a request under the PIA because the request would require the department to perform research in order to determine what responsive records might be favorable to the accused in the pending criminal case. You next inform us that in response to a subpoena, the department identified and released to the requestor's co-counsel numerous documents that are responsive to this request. However, you state that the department declined to release one document under the subpoena and in response to this PIA request. You request that we determine whether the PIA requires the department to release this document to the requestor and urge that this document is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information made confidential by law, including information made confidential by statute. You raise this exception in conjunction with section 63.017 of the Code of Criminal Procedure, a confidentiality provision for certain information related to the missing children and missing persons information clearinghouse (the "clearinghouse"). *See* Code Crim Proc.

art 63.017. The clearinghouse is established within the department and is a central repository of information on missing children and missing persons that is used by all law enforcement agencies of the state. *Id.* arts. 63.002, .003. Section 63.017 reads as follows:

Clearinghouse records that relate to the investigation by a law enforcement agency of a missing child, a missing person, or an unidentified body and records or notations that the clearinghouse maintains for internal use in matters relating to missing children, missing persons, or unidentified bodies are confidential.

Id. art. 63.017. You state that the information at issue is a report concerning a request for information from the clearinghouse. You further state that the information at issue is an internal record and it concerns a law enforcement inquiry regarding missing or unidentified children. As you indicate that the information is a "record or notation that the clearinghouse maintains for internal use in a matter relating to missing children," we agree that the information is deemed confidential by article 63.017. Accordingly, the department must withhold the information from the requestor based on section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

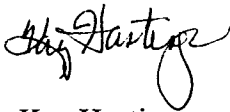
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 199725

Enc: Submitted documents

c: Mr. Steven Miears
P.O. Box 736
Bonham, Texas 75418
(w/o enclosures)